

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GARY WETZEL,
 #24815

Plaintiff,

vs.

ROBERT BANNISTER, *et al.*,
 Defendants.

3:11-cv-00149-RCJ-VPC

ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On March 1, 2011, this court issued an Order severing the claims of each plaintiff in 3:10-cv-00760-HDM-VPC (docket #8). The court directed the Clerk to open separate actions for each plaintiff and file the screening order in each new action. Defendants have filed a motion for reconsideration and/or clarification of the court's screening order (docket #4), which the court now considers.

Where a ruling has resulted in final judgment or order, a motion for reconsideration may be construed either as a motion to alter or amend judgment pursuant to Federal Rule of Civil Procedure 59(e), or as a motion for relief from judgment pursuant to Federal Rule 60(b). *School Dist. No. 1J Multnomah County v. AC&S, Inc.*, 5 F.3d 1255, 1262 (9th Cir. 1993), *cert. denied* 512 U.S. 1236 (1994).

1 Under Fed. R. Civ. P. 60(b) the court may relieve a party from a final judgment or order
2 for the following reasons:

3 (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
4 discovered evidence which by due diligence could not have been
5 discovered in time to move for a new trial under Rule 59(b); (3) fraud
6 (whether heretofore denominated intrinsic or extrinsic), misrepresentation,
7 or other misconduct of an adverse party; (4) the judgment is void; (5) the
8 judgment has been satisfied, released, or discharged, or a prior judgment
upon which it is based has been reversed or otherwise vacated, or it is no
longer equitable that the judgment should have prospective application;
or (6) any other reason justifying relief from the operation of the
judgment.

9 Motions to reconsider are generally left to the discretion of the trial court. *See Combs v. Nick Garin*
10 *Trucking*, 825 F.2d 437, 441 (D.C. Cir. 1987). In order to succeed on a motion to reconsider, a party
11 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
12 decision. *See Kern-Tulare Water Dist. v. City of Bakersfield*, 634 F. Supp. 656, 665 (E.D. Cal. 1986),
13 *aff'd in part and rev'd in part on other grounds* 828 F.2d 514 (9th Cir. 1987). Rule 59(e) of the Federal
14 Rules of Civil Procedure provides that any "motion to alter or amend a judgment shall be filed no later
15 than 28 days after entry of the judgment." Furthermore, a motion under Fed. R. Civ. P. 59(e) "should
16 not be granted, absent highly unusual circumstances, unless the district court is presented with newly
17 discovered evidence, committed clear error, or if there is an intervening change in the controlling law."
18 *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001), *quoting McDowell v. Calderon*, 197 F.3d 1253,
19 1255 (9th Cir. 1999).

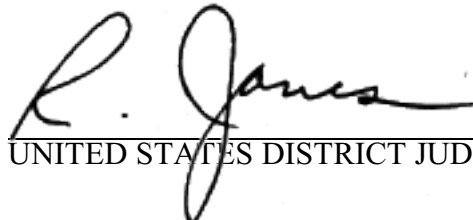
20 In the motion for reconsideration, defendants have presented facts demonstrating that
21 several plaintiffs in 3:10-cv-00760-HDM-VPC have previously used what defendants term "creative
22 joinder" in order to circumvent the mandatory filing fee requirements of the Prison Litigation Reform
23 Act. Good cause appearing, defendants' motion is granted. Plaintiff Wetzel is directed to submit an
24 application to proceed *in forma pauperis* (or pay the filing fee in full) within thirty (30) days of the date
25 of entry of this Order. Plaintiff is expressly cautioned that failure to submit such an application may result
26 in the immediate dismissal of this entire action.

1 **IT IS THEREFORE ORDERED** that defendants' motion for reconsideration and/or
2 clarification of the court's screening order (docket #4) is **GRANTED**.

3 **IT IS FURTHER ORDERED** that the Clerk **SHALL SEND** plaintiff the approved form
4 for an application to proceed *in forma pauperis* by a prisoner, as well as the document "Information and
5 Instructions for Filing a Motion to Proceed *In Forma Pauperis*." Within **thirty (30)** days from the date
6 of entry of this order, plaintiff **SHALL SUBMIT** the full filing fee of \$350, or **SHALL FILE** a
7 completed and signed application to proceed *in forma pauperis* on the form provided by this court.

8 **IT IS FURTHER ORDERED** that plaintiff is expressly cautioned that if he does not
9 timely file an application to proceed *in forma pauperis* in compliance with this order this case may be
10 immediately dismissed.

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12 **DATED this 1st day of April, 2011.**

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17 UNITED STATES DISTRICT JUDGE
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